

REMARKS

Claims 3, 43 and 47 have been amended to correct grammatical errors. No new matter is presented.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect **Species A, which includes claims 1-3, 7-11, 17-22, 32-33 and 41-42, together with generic claims 29-31, 34, 37-40, 43 and 46-47 which link Species A and Species B**, in response to the preliminary restriction requirement set forth in the Office Action and identify claims reading on the Species as follows:

Species A (FIG. 4) Claims 1-3, 7-11, 17-22, 32-33 and 41-42

Species B (FIG. 5) Claims 4-6, 12-16, 23-28, 35-36 and 44-45

Generic Claims 29-31, 34, 37-40, 43 and 46-47

II. Applicants Traverse the Requirement

The Examiner considers Species A and B to be distinct because "Species A utilizes an amplitude of a wobble signal detected while controlling the focus to discern a type of a writable disc, whereas Species B utilizes a sum time in an active section of a wobble PLL lock signal to discern a type of a writable disc."

However, it is believed that claims 4-6, 12-16, 23-28, 35-36 and 44-45 of Species B are so closely related to elected claims 1-3, 7-11, 17-22, 29-34, 37-43 and 46-47 of Species A and the generic claims that the Species B claims should remain in the same application.

Additionally, as the Examiner noted in the Office Action at page 2, elected claims 29 and 39 are generic. Moreover, claims 30-31, 34, 37-38, 40, 43 and 46-47 are also generic. Therefore, it is respectfully submitted that the Examiner is required to examine each of these generic claims along with the examination of the claims directed towards Species A. MPEP 809. Since these generic claims link together Species A and Species B, then even if the Examiner chooses not to withdraw the restriction requirement, if any these generic claims are found allowable, then any claims directed to the nonelected species (species B) must be rejoined and fully examined for patentability. MPEP 809.

There have been no references cited to show any necessity for requiring restriction. It is believed, moreover, that evaluation of the claims directed towards Species B would not provide

an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Species B claims by filing divisional applications. MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. MPEP §803(A) indicates that the inventions must be independent or distinct as claimed, and MPEP §803(B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). Furthermore, the Examiner must explain why there would be a serious burden if restriction is not required. MPEP 808.02. The Examiner has not explained why there would be a serious burden if restriction is not required, and the applicants respectfully submit that there is no such burden in this case.

Even if the Examiner considers the claims directed towards Species A to be a separate invention from the claims directed towards Species B, the Applicants respectfully request the Examiner to consider claims 1-3, 7-11, 17-22, 29-34, 37-43 and 46-47 (Species A and generic claims) and claims 4-6, 12-16, 23-28, 35-36 and 44-45 (Species B) together.

III. Conclusion

Upon review of references involved in this field of technology, when considering that the elected claims (Species A) are directed towards using an amplitude of a detected wobble signal to discern a type of a writable disc and the non-elected claims (Species B) are directed towards using a wobble phase-locked loop signal of a detected wobble signal to discern a type of a writable disc, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.


If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 503333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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